

AER
19

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.353 of 1991

Pratap Singh
Vs
State of Chhattisgarh

JUDGMENT.

Post for 30.04.2007

Sd/-
Sunil Kumar Sinha
Judge

Noted.
A.S.A.
30/4/07

20
A/R

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.353 of 1991

Appellant:

Pratap Singh S/o Shiv
Charan Singh Rajput, aged
about 30 years, R/o 3
Number Dafai Kurasia, P.S.
Chirimiri, Distt. Surguja,
(C.G)

Vs.

Respondent:

State of Madhya Pradesh
(now Chhattisgarh) through
P.S. Chirimiri, District
Surguja (C.G)

Appearance:

Shri Chandresh Shrivastava, counsel for the appellant.
Shri U.K.S. Chandel, Panel Lawyer, for the State.

JUDGMENT
(30.04.2007)

Sunil Kumar Sinha, J.

(1) This appeal is directed against the judgment of conviction and order of sentence dated 23.3.1991 passed in Sessions Trial No.69/1990 by the Additional Sessions Judge, Manendragarh, District Surguja, whereby the said Court convicted the appellant u/s 363 and 376 I.P.C. and sentenced to undergo R.I. for 3 years and 10 years respectively.

(2) The brief facts are that on 14.9.1989, a dinner was organized in the in-laws place of the appellant, in which the family of the victim was also invited. At about 8 p.m., the prosecutrix namely Ku.Triloki, a girl aged about 8 years was taking food in the said dinner. The appellant came to her and enticed her by saying that he will give sweets to her and took her to his own house and committed forcible sexual intercourse

against her. Thereafter, he left the prosecutrix near her house. The prosecutrix narrated this story to her mother and father. It was also disclosed to other persons. They all saw blood oozing out from the vagina of the prosecutrix, thereafter, she was taken to the Police station where the report Ex.P.1 was lodged. The blood stained underwear of the prosecutrix was also seized and she was sent for medical examination. The appellant was arrested on 27.11.1989 and after completion of investigation, charge sheet was filed and after conclusion of the trial, the appellant was convicted as aforementioned.

(3) The conviction of the appellant is based upon the testimony of the prosecutrix Ku.Triloki (P.W.1), her mother Gulab Bai (P.W.2) and Dr.(Smt.) Padma Gupta (P.W.3).

(4) Learned counsel for the appellant argued that, in fact, the testimony of the prosecutrix is not trustworthy and the conviction based upon her testimony said to be supported by the witnesses i.e., mother and Doctor is bad in law which deserves to be set aside by this Court.

(5) On the other hand, learned State Counsel submitted that the evidence of the prosecutrix is trustworthy and the same is duly supported by the medical evidence of Dr.Padma Gupta (P.W.3) and also her mother Gulab Bai (P.W.2) and there is hardly any room for the appellant to assail the judgment on these points.

(6) I have heard learned counsel for the parties at length and have also perused the records of the Sessions Court.

(7) It comes in the evidence of P.W.1 Ku. Triloki that in the said night, the appellant said to her that he will give her sweets and on this, she had gone along-with the appellant. She was taken by the appellant in his house where her clothes were removed, the appellant also removed his own cloths, thereafter, she was laid down and the appellant penetrated his Penis into her Vagina. She has stated that she had resisted the same and asked to leave her, but the appellant did not leave her. She has also deposed that after this, blood started coming out from her Vagina and after all this, the appellant left her near her house. In para 3, she states that when she reached to her house, the mother saw blood stains in her underwear and she narrated the entire story to her mother. She has also complained pains in her vagina. The mother told the story to the father. Thereafter, her father called other persons and then she was taken to the Police Station where she lodged the report (Ex.P.1). She has admitted that the F.I.R. bears her signature. Her underwear was seized and a document vide Ex.P.2 was prepared which also bears her signature. She also deposed that she was taken to Manendragarh Hospital where she was medically examined. This evidence of prosecutrix is supported by her mother Gulab Bai (P.W.2). She has deposed that the age of the prosecutrix was about 8 years and she alongwith the prosecutrix and her husband had gone to the in-laws place of the appellant on the occasion of *Chhatti* ceremony in the said night. At that time, the appellant was also there and he was teasing the prosecutrix as the prosecutrix used to say her as brother-in-law (*Jija*). After

the dinner, she could notice that the prosecutrix is not there, then she made a search along-with the husband, but she could not find out her and they, in usual manner, returned to the house. After some time, the girl returned back and when she was asked as to where she was, she started weeping and narrated the story to her. She saw the underwear of the girl which was stained with blood and thereafter the story was disclosed to other persons namely O-P, Gopal, Pitambar and the elder brother of her husband etc. They also noticed that blood is coming out from the Vagina of the girl. Dr. Smt. Padma Gupta (P.W.3) deposed that at the relevant time, she was posted in Community Health Center, Manendragarh. The prosecutrix was brought to her alongwith a requisition (Ex.P.3), on which, she was medically examined. The Doctor has identified the prosecutrix in the Court also because she was also present on the date of her examination. According to her, there was swelling in libia minora and libia majora, they were inflamed. There was tenderness also and the hymen was torn. She noticed that margins were irregular and fresh one, red in colour and bleed on touch. Tenderness was also present there. There was a tear of about 1 cm in the post vaginal wall with bleeding present. The vagina was congested. She had given her opinion that all these were signs of recent sexual intercourse. She has proved her report as Ex.P.3.

(8) Nothing has been brought by the defence against the evidence of these witnesses which may discredit their testimony. On the evidence of prosecutrix, it is clear that it was a case of

24

complete penetration which she has disclosed in the first instance to her mother and thereafter she has also disclosed in the First Information Report promptly lodged by her on 14.9.1989 itself. In the said report also the details have been given by her. Not only this, the evidence of lady Doctor is also suggestive of the fact that a complete penetration was done and the girl was subjected to forcible sexual intercourse.

(9) Why the evidence of the prosecutrix, duly supported by the mother and Doctor, should be disbelieved ? The cardinal principle of law is that the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex offender is entitled to great weight, absence of corroboration notwithstanding. Please see Bharwada Bhoginbhai Hirjibhai -Vs- State of Gujarat, AIR 1983 SC 753 referred by the Apex court in the matter of State of Tamil Nadu -vs- Ravi @ Nehru 2006(7) SBR 264 while dealing with a case of rape victim, aged about 4-5 years.

(10) Therefore, it is clear that where the evidence of the prosecutrix inspires the confidence of the Court, the corroboration as a condition for relying on her testimony is not a requirement of law, but is only a guidance of prudence, because, apart from many factors she being the victim stands on par with an injured witness, and best among all for ascertaining the truth.

(11) In the present case, the situation is far better. There is nothing in the evidence of prosecutrix on which her testimony can be discarded. Her evidence has come in a natural manner making clear and unambiguous statement which inspires the confidence of the Court and even the conviction was possible without any further corroboration. However, her testimony is duly corroborated by medical evidence which further strengthens the case of prosecution as the theory given by the prosecutrix regarding complete penetration is supported by the Doctor.

(12) I do not find any infirmity in the judgment of conviction and order of sentence passed by the Sessions Court. There is no merit in the appeal. The same is accordingly dismissed.

Sd/-
Sunil Kumar Sinha
Judge